

FIRST NOTICE OF COMMENT PERIOD

LSA Document #15-326

STARTUP, SHUTDOWN, AND MALFUNCTION (SSM) EMISSIONS**PURPOSE OF NOTICE**

The Indiana Department of Environmental Management (IDEM) is soliciting public comment on amendments to rules at [326 IAC 1-6](#) and [326 IAC 2-9-1](#)(h) concerning the treatment of excess emissions at certain industrial facilities during periods of startup, shutdown, or malfunction (SSM). IDEM seeks comment on the affected citations listed and any other provisions of Title 326 that may be affected by this rulemaking.

CITATIONS AFFECTED: [326 IAC 1-6-1](#); [326 IAC 1-6-2](#); [326 IAC 1-6-4](#); [326 IAC 1-6-5](#); [326 IAC 1-6-6](#); [326 IAC 2-9-1](#).

AUTHORITY: [IC 13-14-8](#); [IC 13-17-3](#).

SUBJECT MATTER AND BASIC PURPOSE OF RULEMAKING**Basic Purpose and Background**

The United States Environmental Protection Agency (U.S. EPA) published findings in the Federal Register (FR) on June 12, 2015 (80 FR 33839) concerning inadequacies to startup, shutdown, and malfunction (SSM) provisions in state rules. This action, effective on May 22, 2015, directs thirty-six (36) states, including the state of Indiana, to correct specific provisions in State Implementation Plans (SIPs) concerning the treatment of excess emissions that occur at certain industrial facilities during periods of SSM to be consistent with the Clean Air Act (CAA) and with U.S. EPA's updated SSM policy. Section 302(k) of the CAA requires SIPs to contain emission limitations that "limit the quantity, rate, or concentration of emissions of air pollutants on a continuous basis." However, the conditions listed in [326 IAC 1-6-4](#)(a) would allow an exemption for noncompliance with emission limitations during certain malfunction events. Owners and operators of facilities that are required to obtain a permit under [326 IAC 2-5.1](#) or [326 IAC 2-6.1](#), generally those sources requiring a construction permit after December 25, 1998, except for exemptions as listed in the rule, will be affected by this rulemaking. States are required to submit a revision of the inadequate SSM provisions for approval into the SIP by November 22, 2016.

IDEM is proposing to amend state rules to address SSM deficiencies. One of the provisions of this rule, [326 IAC 1-6-3](#) (preventive maintenance plan), will not be affected by this rulemaking because it does not pertain to a malfunction. Therefore, this provision is not included in this rulemaking. [326 IAC 2-9-1](#)(h) will be changed because it references this rule in its requirements and states that, if exceedances are due to a malfunction, then the provisions of [326 IAC 1-6](#) shall apply. Therefore, as [326 IAC 2-9-1](#) changes, [326 IAC 1-6](#) will be changed accordingly.

IDEM seeks comment on the affected citations listed, including suggestions for specific rule language, any other provisions of Title 326 that may be affected by this rulemaking, and alternative ways to achieve the purpose of the rulemaking.

Alternatives to Be Considered Within the Rulemaking

Alternative 1. Modify the language in [326 IAC 1-6-4](#) to address U.S. EPA concerns regarding SSM requirements.

- Is this alternative an incorporation of federal standards, either by reference or full text incorporation? No.
- Is this alternative imposed by federal law or is there a comparable federal law? This alternative is imposed by U.S. EPA, in the FR on June 12, 2015 (80 FR 33839).
- If it is a federal requirement, is it different from federal law? Not applicable.
- If it is different, describe the differences. Not applicable.

Alternative 2. Do not amend this state rule.

- Is this alternative an incorporation of federal standards, either by reference or full text incorporation? No.
- Is this alternative imposed by federal law or is there a comparable federal law? No.
- If it is a federal requirement, is it different from federal law? Not applicable.
- If it is different, describe the differences. The alternative to not amend the state rule as required by U.S. EPA may have consequences associated with it, since it is a federal mandate. The potential consequences could negatively impact the state's infrastructure SIP approval for permitting and compliance enforcement.

Applicable Federal Law

This rulemaking addresses the U.S. EPA finding published in the FR on June 12, 2015 (80 FR 33839) that interprets Section 302(k) of the CAA.

Potential Fiscal Impact

Potential Fiscal Impact of Alternative 1. There will be no fiscal impact on affected sources beyond what is required by federal regulation.

Potential Fiscal Impact of Alternative 2. The consequences associated with Alternative 2 may have a fiscal impact; however, the potential fiscal impact cannot be quantified at this time.

Small Business Assistance Information

IDEM established a compliance and technical assistance program (CTAP) under [IC 13-28-3](#). The program provides assistance to small businesses and information regarding compliance with environmental regulations. In accordance with [IC 13-28-3](#) and [IC 13-28-5](#), there is a small business assistance program ombudsman to provide a point of contact for small businesses affected by environmental regulations. Information on the CTAP program, the monthly CTAP newsletter, and other resources available can be found at:

www.in.gov/idem/ctap

For purposes of [IC 4-22-2-28.1](#), small businesses affected by this rulemaking may contact the Small Business Regulatory Coordinator:

Jessica Faust-Hamblin
IDEM Small Business Regulatory Coordinator
IGCN 1225
100 North Senate Avenue
Indianapolis, IN 46204-2251
(317) 232-8172 or (800) 988-7901
ctap@idem.in.gov

For purposes of [IC 4-22-2-28.1](#), the Small Business Ombudsman designated by [IC 4-4-35-8](#) is:

Erik Scheub
Office of Small Business and Entrepreneurship
One North Capitol, Suite 600
Indianapolis, IN 46204
(317) 232-5679
ombudsman@osbe.in.gov

Resources available to regulated entities through the small business ombudsman include the ombudsman's duties stated in [IC 4-4-35-8](#), specifically [IC 4-4-35-8\(9\)](#), investigating and attempting to resolve any matter regarding compliance by a small business with a law, rule, or policy administered by a state agency, either as a party to a proceeding or as a mediator.

The Small Business Assistance Program Ombudsman is:

Steven N. Howell
IDEM Small Business Assistance Program Ombudsman
IGCN 1301
100 North Senate Avenue
Indianapolis, IN 46204-2251
(317) 232-8587 or (800) 451-6027
snhowell@idem.in.gov

Public Participation and Work Group Information

At this time, no work group is planned for the rulemaking. If you feel that a work group or other informal discussion on the rule is appropriate, please contact Jack Harmon, Rules Development Branch, Office of Legal Counsel at (317) 234-9535 or (800) 451-6027 (in Indiana). IDEM will contact and meet with affected sources as additional information is obtained from U.S. EPA on how to proceed with this rulemaking.

REQUEST FOR PUBLIC COMMENTS

At this time, IDEM solicits the following:

- (1) The submission of alternative ways to achieve the purpose of the rule.
- (2) The submission of suggestions for the development of draft rule language.

Comments may be submitted in one of the following ways:

- (1) By mail or common carrier to the following address:
LSA Document #15-326 Startup, Shutdown, Malfunction (SSM)

Jack Harmon
Rules Development Branch
Office of Legal Counsel
Indiana Department of Environmental Management
Indiana Government Center North
100 North Senate Avenue
Indianapolis, IN 46204-2251

- (2) By facsimile to (317) 233-5970. Please confirm the timely receipt of faxed comments by calling the Rules Development Branch at (317) 232-8922.

- (3) By electronic mail to jaharmon@idem.in.gov. To confirm timely delivery of submitted comments, please request a document receipt when sending the electronic mail. **PLEASE NOTE: Electronic mail comments**

will NOT be considered part of the official written comment period unless they are sent to the address indicated in this notice.

(4) Hand delivered to the receptionist on duty at the thirteenth floor reception desk, Office of Legal Counsel, Indiana Government Center North, 100 North Senate Avenue, Indianapolis, Indiana.

Regardless of the delivery method used, in order to properly identify each comment with the rulemaking action it is intended to address, each comment document must clearly specify the LSA document number of the rulemaking.

COMMENT PERIOD DEADLINE

All comments must be postmarked, faxed, or time stamped not later than October 30, 2015. Hand-delivered comments must be delivered to the appropriate office by 4:45 p.m. on the above-listed deadline date.

Additional information regarding this action may be obtained from Jack Harmon, Rules Development Branch, Office of Legal Counsel (317) 234-9535 or (800) 451-6027 (in Indiana).

Nancy King, Chief
Rules Development Branch
Office of Legal Counsel

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